UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,914	11/04/2003	Scott E. Hrastar	4725	7780

22474   7590   05/05/2008
CLEMENTS BERNARD MILLER
1901 ROXBOROUGH ROAD
SUITE 300
CHARLOTTE, NC 28211

EXAMINER
TIV, BACKHEAN

ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
05/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

The proposed amendments raises new issues for dependant claims and does not simplify issues for appeals.

The affidavit filed on 4/9/08 under 37 CFR 1.131 has been considered but is ineffective to overcome the US Publication 2005/0015623 issued to Williams et al. reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Williams reference.

MPEP 715.07 states,

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.").

Exhibit A does not clearly show comparison of topology data to prior topology data as required by the claims. Exhibit A establishes a user can create policies to evaluate traffic and apply the policies to certain devices. If network traffic violates policies then the user/system administrator is alerted of the violation. Alerting a user of policy violation is not the same as comparing topology data to prior topology data.

Furthermore, MPEP 2138.05, requires for an actual reduction to practice, the invention must have been sufficiently tested to demonstrate that it will work for it's intended purpose. The affidavit does not provide evidence of testing required to establish an actual reduction to practice.